

**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH 'A' LUCKNOW**

[Through Virtual Hearing]

**BEFORE SHRI A.D JAIN, VICE PRESIDENT AND
SHRI T.S. KAPOOR, ACCOUNTANT MEMBER**

ITA No. 195/Lkw/2020
A.Y. 2016-17

Archisha Educational Trust, C-2024, II Floor, C Block, Indira Nagar, Lucknow – 226016 PAN – AAABT 9595K	Vs.	Income Tax Officer (Exemption), Lucknow
(Appellant)		(Respondent)

ITA No. 242/Lkw/2020
A.Y. 2016-17

Income Tax Officer (Exemption), Lucknow	Vs.	Archisha Educational Trust, C-2024, II Floor, C Block, Indira Nagar, Lucknow – 226016 PAN – AAABT 9595K
(Appellant)		(Respondent)

Appellant by	Shri Rakesh Garg, Advocate
Respondent by	Shri Ajay Kumar, DR
Date of hearing	20/01/2021
Date of pronouncement	09/02/2021

ORDER

PER T.S. KAPOOR, A.M.:

These two appeals have been filed by the assessee as well as by the Revenue against the order of Id. CIT(A)-1, Lucknow dated 11.03.2020. The

grounds of appeal taken by the assessee as well as by the Revenue are reproduced below:

ITA No. 195/Lkw/2020.

01. *Because the CIT(A) has erred on facts and in law in upholding the addition of Rs.64,000/- and Rs. 1,00,000/- respectively, being amounts received towards donation from two students; treating them to be anonymous donation u/s.115BBC of the Act, which addition is contrary to facts bad in law and be deleted.*
02. *Because complete details of the donation received as required as per section 115BBC having being maintained and furnished, the CIT(A) was not justified in treating the donation of Rs.64,000/- and Rs.1,00,000/- as unexplained u/s.115BBC of the Act, the addition made be deleted.*
03. *Because as a proper approval of the facts and also the provisions of section 115BBC, it would be found that the same are not applicable to the facts of the case, the CIT(A) has erred in upholding the addition made, the same be deleted.*
04. *Because name, address and complete identity of the donors as available, having being furnished, the donation having being received through banking channel, there was no reason to disbelieve the same and mere failure on the part of the donors to file confirmation; in response to the notice issued u/s.133(6) cannot be inferred as a ground to disbelieve the explanation filed by the assessee, the addition of Rs.64,000/- and Rs.1,00,000/- made by the AO and upheld by the CIT(A), be deleted.”*

ITA No. 242/Lkw/2020

1. *The Ld. CIT(A) has erred in law and on facts in deleting the addition of the non-corporate donation from students/others persons amounting to Rs. 71,64,000/- as anonymous donation u/s 115BBC of the Income Tax Act, 1961 by the*

AO even when out of the donation confirmation letters sent during the course of assessment proceedings some have returned back, some have no reply and majority of them have 2 different set of confirmation letters with signature mismatch and hence not credible.

- 2. The Ld. CIT(A) has erred in law and on facts in deleting the addition of the corpus donation from students/others persons amounting to Rs. 1,19,36,200/- as anonymous donation u/s 115BBC of the Income Tax Act, 1961 by the AO even when out of the donation confirmation letters sent during the course of assessment proceedings some have returned back, some have no reply and majority of them have 2 different set of confirmation letters with signature mismatch and hence not credible.*
- 3. The Ld. CIT(A) has erred in law and on facts in deleting the addition of the non-corpus donation from students/others persons amounting to Rs.71,64,000/- as anonymous donation u/s 115BBC of the Income Tax Act, 1961 by the AO even when the alleged donors have failed to furnish their annual income and also failed to justify their source of income through any corroborating documents during the course of assessment proceedings as well as during the preparation of remand report despite being specifically asked. .*
- 4. The Ld. CIT(A) has erred in law and on facts in deleting the addition of the corpus donation from students/others persons amounting to Rs. 1,19,36,200/- as anonymous donation u/s 115BBC of the Income Tax Act, 1961 by the AO even when the alleged donors have failed to furnish their annual income and also failed to justify their source of income through any corroborating documents during the course of assessment proceedings as well as during the preparation of remand report despite being specifically asked.*
- 5. The Ld. CIT(A) has failed to appreciate the facts of the case in disallowing the addition of the non-corpus donation from students/others persons amounting to Rs. 71,64,000/- as anonymous donation u/s 115BBC of the Income Tax Act, 1961 by the AO even when the plea taken by the assessee during the course of assessment proceedings,*

that the students studying in the school are minors and belong to the poor family of villagers and farmers, is self contradictory to the assessee and clearly proves that the said donations are anonymous donations.

6. *The Ld. CIT(A) has failed to appreciate the facts of the case in disallowing the addition of the corpus donation from students/others persons amounting to Rs. 1,19,36,200/- as anonymous donation u/s 115BBC of the Income Tax Act, 1961. by the AO even when the plea taken by the assessee during the course of assessment proceedings, that the students studying in the school are minors and belong to the poor family of villagers and farmers, is self contradictory to the assessee and clearly proves that the said donations are anonymous donations.*
7. *The Ld. CIT(A) has erred in law and on facts in deleting the addition of the non-corpus donation from students/others persons amounting to Rs. 71,64,0007- and corpus donation from students / others persons amounting to Rs.1,19,36,200/- as anonymous donation u/s 115BBC of the Income Tax Act, 1961 by the AO even when the donation confirmation exercise undertaken during the course cc assessment proceedings corroborate the same and present severe anomaly in the same,.*
8. *The Ld. CIT(A) has erred in law and on facts in deleting the addition in the case of Anupam Srivastava and Shivang Singh even when the addresses of the said students given by the assessee and that printed on aadhar of the student during the preparation of the remand report are different and hence not credible.*
9. *Appellant craves leave to add or amend any one or more of the grounds of appeal, as stated above as and when need of doing so arises with the prior permission of the Hon'ble Bench."*

2. The Id. AR at the outset submitted that the assessee is running a school and is also registered u/s. 12A of the Act and during the year under consideration, it had received corpus as well as non corpus donations both from students as well as from donors. The AO treated a small part of the

amount of donations from donors to be anonymous donations on the basis that confirmation letters sent by AO had returned back as unserved. It was submitted that whole of donations received from students/parents of the students were also held to be anonymous donations u/s. 115BBC of the Act. On appeal before Id. CIT(A), the Id. AR submitted before him that assessee had maintained complete record of the persons from whom the donations were received, therefore, such donations cannot be treated as anonymous donations. The Id. CIT(A) on a remand report received from AO deleted the donations received from 19 students who had filed confirmations and also deleted donations from students to whom notices were not issued. However, he upheld the addition in respect of three persons from whom the confirmations were not received/notice came back unserved. The Id. AR submitted that complete details of persons from whom donations were received were furnished and in this respect our attention was invited to paper book Pgs. 6 to 8 where the breakup of donations received from students as well as others were placed. Our attention was also invited to paper book Pgs. 9 to 24 where the complete addresses of students from whom donations were received was placed and we were also taken to list of donors where besides names and addresses, PAN numbers were also mentioned. It was submitted that since assessee had maintained complete list of names and addresses, Section 115BBC was not applicable. In this respect our attention was invited to provisions of Section 115BBC of the Act wherein the anonymous donation has been defined. Our specific attention was invited to sub Section 3 to sub Section 115BBC wherein it has been mentioned that where the assessee maintains name and complete addresses of the donors the same cannot be said to be anonymous donations. The Id. AR, therefore, argued that since assessee had maintained complete details and had provided complete

details to the AO and CIT(A) the addition u/s. 115BBC was not justified. The Id. AR in this respect relied on the following case laws:

1. ACIT vs. Shree Shiv Vankeshwar Educational & Social Welfare Trust, ITA No. 4623/Del/2012 order dated 16.05.2019.
2. ITO (Exemption) vs. Shri Narain Educational & Welfare Trust, ITA No. 15/Lkw/2015 order dated 10.07.2015.
3. ACIT vs. Sahyog Jan Kalyan Samiti, ITA No. 568 to 572/Lkw/2013 order dated 07.01.2014.
4. ITO vs. Saraswati Educational Charitable Trust, ITA No. 776/Lkw/2014 order dated 17.01.2015.
5. ITO(Exemption) vs. Satyug Darshan Trust – [2016] 65 taxmann.com 15 (Del-Trib) order dated 04.11.2015.
6. Patanjali Yogpeeth (Nyas) vs. ADIT (Exemptions) [2017] 78 taxmann.com 128 (Del-Trib).

3. The Id. DR on the other hand, heavily placed reliance on the order of AO. Regarding the appeal filed by the Revenue, the Id. DR submitted that out of 599 students notices were sent only to 21 students and even during remand proceedings, the notices were sent to only 21 students and therefore, the donations from other students remained unconfirmed. The Id. CIT(A) therefore, has wrongly allowed relief to the assessee. The Id. AR in reply to the Revenue's appeal submitted that it was sufficient on the part of assessee to maintain complete name and addresses of the donors and that assessee had maintained and therefore, the addition was not sustainable u/s. 115BBC of the Act.

4. We have heard the rival parties and have gone through the material placed on record. The brief facts as are coming out from material on record are that the appellant is a educational society established in the year 2008 with the object for imparting education and it is registered u/s. 12A of the

Act. For the year under consideration, the assessee filed its return of income declaring NIL income whereas the assessment has been completed on a total income of Rs.1,93,51,200/-. While framing the assessment, the Id. AO has made additions of anonymous donations u/s. 115BBC of the Act. The AO had observed that the assessee had received corpus donations amounting to Rs.1,19,76,200/-. The Id. AO further observed that the assessee had received Rs.1,000/- per student per month from all the students, the amount of which, amounted to Rs.71,88,800/-. The AO further observed that the assessee had received donations to the tune of Rs.16,62,000/- from various persons. In order to verify the genuineness of these receipts, the AO issued notices u/s. 133(6) of the Act to 21 persons on random basis out of which, confirmations were received from 19 persons and from two persons confirmation were not received and the letters were received back. From confirmation letters the AO observed that the replies were sent from Lucknow whereas the assessee was situated at Hardoi and therefore, he treated the donations as in genuine. However, out of total of Rs.16,62,000/- received from donors the AO treated only Rs.1,87,000/- as anonymous donations whereas all other donations received from students were held to be anonymous donations and taxed u/s. 115BBC of the Act. The Id. CIT(A) however allowed relief to the assessee substantially and confirmed additions to the tune of Rs.1,64,000/- only from three persons. While giving relief to the assessee, the Id. CIT(A) allowed relief in respect of 19 students in respect of whom the confirmations were received and also allowed relief in respect of students to whom no notices were issued. The revenue is against the relief allowed on various grounds wherein one of the ground is that AO had issued notices to only 19 persons therefore, donations from rest of the persons verified cannot be said to be as they could not be confirmed. We

find that the additions were made by AO by treating the donations as anonymous donations u/s. 115BBC of the Act. Therefore, it is important to first visit the provisions of Section 115BBC of the Act which reads as under:

“Anonymous donations to be taxed in certain cases.

115BBC. (1) Where the total income of an assessee, being a person in receipt of income on behalf of any university or other educational institution referred to in sub-clause (iiiad) or sub-clause (vi) or any hospital or other institution referred to in sub-clause (iiiiae) or sub-clause (via) or any fund or institution referred to in sub-clause (iv) or any trust or institution referred to in sub-clause (v) of clause (23C) of section 10 or any trust or institution referred to in section 11, includes any income by way of any anonymous donation, the income-tax payable shall be the aggregate of—

(i) the amount of income-tax calculated at the rate of thirty per cent on the aggregate of anonymous donations received in excess of the higher of the following, namely:—

(A) five per cent of the total donations received by the assessee; or

(B) one lakh rupees, and

(ii) the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the aggregate of anonymous donations received in excess of the amount referred to in sub-clause (A) or sub-clause (B) of clause (i), as the case may be.

(2) The provisions of sub-section (1) shall not apply to any anonymous donation received by—

(a) any trust or institution created or established wholly for religious purposes;

(b) any trust or institution created or established wholly for religious and charitable purposes other than any anonymous donation made with a specific direction that such donation is for any university or other educational institution or any hospital or other medical institution run by such trust or institution.

(3) For the purposes of this section, "anonymous donation" means any voluntary contribution referred to in sub-clause (iia) of clause (24) of section 2, where a person receiving such contribution does not maintain a record of the identity indicating the name and address of the person making such contribution and such other particulars as may be prescribed.”

5. As per the above definition, the person receiving the donations has to maintain the record of the identity indicating the name and addresses of the persons making such donations. To come out of the

definition of anonymous donation, the only requisite condition is that names and addresses from whom the donation has been received has to be maintained. The section is silent thereafter unlike Section 68 which casts an obligation on the assessee to explain the amount credited in the books along with the explanation to the satisfaction of AO. The moment the person receiving the donations provides the record containing the names and addresses of the persons from whom the donation has been received such donation comes out of the definition of anonymous donations. In the present case, it is undisputed fact that assessee had maintained complete record regarding identity of donors along with their addresses. Such information has been filed before us also in the form of paper book which is placed Pgs. 6 to 24. This list of donors other than students contains PAN numbers also. Therefore, these donations cannot be termed as anonymous donations and hence cannot be taxed u/s. 115BBC of the Act.

6. The ITAT Delhi Benches in the case of Shree Shiv Vankeshwar Educational & Social Welfare Trust, (Supra) vide order dated 16.05.2019 in Para 10 has held as under:

“10. The anonymous donations will not be covered if donations received by any trust or institution created or established wholly for religious purposes or donations received by any trust or institution created or established for both religious as well as charitable purposes other than any anonymous donation Page | 6 ACIT Vs Shree Shiv Vankeshwar Educational & Social Welfare Trust, ITA No. 4623/Del/2012 (Assessment Year: 2009-10) made with a specific direction that such donation is for any university or other educational institution or any hospital or other medical institution run by such trust or institution. Sub-section (3) defines "anonymous donation" to mean any voluntary contribution referred to in section 2(24)(ia), where a person receiving such contribution does not maintain a record consisting of the identity of the person making such contribution indicating

the name and address of the person and such other particulars as may be prescribed. We asked whether the central board of direct tax has prescribed any particulars which is required to be maintained by the assessee trust, the answer was no. We also did not find any such prescription about what kind of particulars the assessee trust is required to maintain. Therefore, it is apparent that at present the simple requirement is maintaining the name and address of the donors. In the present case, the assessee has already given much more detail than the name and address of the donors. Therefore with respect to the donation from 1038 persons the assessee has shown their name and address along with other particulars. It is not the case of the revenue that assessee has not maintained and provided these details to the assessing officer. In view of this we do not find that the donation received by the assessee falls into the definition of anonymous donation. Hence on the applicability of the provisions of section 115BBC of the income tax act we find that the learned CIT - A has correctly reached the conclusion that the donation received by the assessee is not an anonymous donation as provided under section 115BBC of the act. Therefore on this count also we uphold the order of the learned CIT-A.”

6.1 Similarly the ITAT, Lucknow Benches in ITA No. 15/Lkw/2015 vide order dated 10.07.2015 in para 8 held as under:

“8. In other cases also similar view was expressed by the Tribunal. In the instant case, since the assessee has furnished complete details of the donors along with PAN,’ the said donation cannot be called to be anonymous donation. Therefore, provisions of section 115BBC of the Act cannot be invoked. Keeping in view the totality of the facts and circumstances of the case, we are of the considered opinion that no disallowance can be made either under section 68 of the Act or under section 115BBC of the Act. Therefore, we find no infirmity in the order of the Id. CIT(A) who has rightly deleted the addition.”

6.2 The Lucknow Bench in ITA No. 665/Lkw/2016 vide order dated 31.08.2018 has dismissed the appeal filed by the Revenue by holding as under:

“5. We have heard the rival parties and have gone through the material placed on record. We find that the assessee is registered u/s 12A of the Act vide order dated 10/06/2008 passed by learned CIT, Lucknow. During the assessment year the Assessing Officer observed that the assessee had received donation and voluntary contribution amounting to Rs.95 lakh and therefore, the assessee was required to furnish complete names and addresses of the persons from whom donations and voluntary contributions were received. The assessee furnished the complete list of donors with names and addresses, a copy of which is placed at pages 11 to 40 of the paper book. As per the provisions of section 115BBC(3) the anonymous donation means any voluntary contribution referred to in sub-clause (iia) of clause (24) of section 2, where a person receiving such contribution does not maintain a record of the identity indicating the name and address of the person making such contribution and such other particulars as may be prescribed. Learned D. R. was not able to demonstrate as to what other particulars have been prescribed for recording the voluntary contributions or donations. The record maintaining the name and address of the persons has already been maintained by the assessee and during assessment proceedings a complete list was provided to the Assessing Officer, a copy of which is placed at pages 11 to 40 of the paper book. The learned CIT(A) has relied on the case law of Hans Raj Samarak Society vs. Asstt. Director of Income Tax (Exemptions) of Delhi Tribunal and has also relied on the case law of Gagan Solanki Memorial Educational Society vs. Asstt. Director of I. Tax (E) where the requirement of section 115BBC has been discussed. The relevant findings of learned CIT(A) are reproduced as under:

“5.4 I have examined the facts and circumstances of the case and have considered the findings of the AO and submissions of the appellant.

The main issue in dispute is whether provisions of sec 115BBC of the I.T Act, 1961 were violated or not by the appellant and whether the donations of Rs.95,00,000/- received by it can be categorised as anonymous donations.

In order to prevent channelisation of unaccounted money to these institutions by way of anonymous donations, a new section 115BBC has been inserted to provide that any income of

a wholly charitable trust or institution by way of any anonymous donation shall be included in its total income and taxed at the rate of 30%. Anonymous donation to wholly religious trusts or institutions will not be taxed.

Anonymous donation has been defined in the new section to mean any voluntary contribution referred to in section 2(24) (ia) of the Act, where a person receiving such contribution does not maintain a record of the identity indicating the name and address of the person making such contribution and such other particulars as may be prescribed. To be excluded from the definition of anonymous donations the person receiving the donation is required to maintain the record of identity indicating the name and address of contributor and such other particulars as may be prescribed. Since no other particulars have been prescribed under the provisions the person receiving the donation is under obligation to maintain the identity of donors indicating the name and address. On perusal of the details filed by appellant it is seen that the appellant has not only furnished the names and addresses of donors but also furnished a number of other details in respect of some donors viz ID proofs and address proofs. In view of above it is held that appellant has established the identity of donors as provided u/s 115BBC of IT. Act, 1961 and the donations received by the appellant cannot be categorised as anonymous donations and cannot be subjected to tax as per provisions of sec 115BBC of IT. Act, 1961.

5.5 Reliance is also placed on decision of Hon'ble ITAT Bench A in ITO-2(3), Lucknow Vs. M/s Saraswati Educational Charitable Trust in ITA no 776/LKW/2014 Dated 17.06.2015 wherein the facts on the issue of anonymous donations are similar to the appellant's case.

5.6 Reliance was placed on decision of Hon'ble Delhi bench of ITAT in case of Hans Raj Samarak Society Vs. ADIT 16 Taxman 103. As per the decision the receiver has the obligation to maintain the identity indicating the name and address only and nothing more. No other particular has been prescribed under the provision. No other word can be read in Sec-115BBC(3) other than words finding place therein.

5.7 Reliance was also placed on decision of Hon'ble Delhi High Court which confirmed the decision of Hon'ble ITAT in case

of DIT(E) Delhi Vs. Hans Raj Samarak Society(2013) 35 Taxman642(Delhi).

5.8 Reliance is placed on decision of Hon'ble ITAT, Delhi in the case of M/s Gagan Solanki Memorial Educational Society vs. ADIT(E) in ITA No. 1495 (Del.)/2011 for A.Y. 2007-08 wherein it has been held that "The legislature has provided for maintaining the record of identity which indicates names and address of donors. Nothing beyond can be read in the section. Moreover, provision has been made for particular's as may be prescribed. Undisputedly, however, no such particulars have been prescribed."

In view of above discussion and decisions of Hon'ble Jurisdictional ITAT, Hon'ble Delhi ITAT and Hon'ble Delhi High Court, the addition of Rs. 95,00,000/- made by the AO is not justified is hereby deleted."

5.1 The above findings of learned CIT(A) are quite exhaustive and require no interference from our side.

6. In the result, the appeal of the Revenue stands dismissed."

7. Similar view has been taken in various cases relied on by Id. AR.

8. In view of above facts and circumstances and judicial precedents relied on by the assessee, the appeal filed by the assessee is allowed whereas the appeal filed by the Revenue is dismissed.

9. In the result, appeal filed by the assessee is allowed and appeal of the Revenue is dismissed.

(Order pronounced in the open court on 09/02/2021)

Sd/-

(A.D. Jain)

Vice President

Aks -

Dtd. 09/02/2021

Sd/-

(T.S. Kapoor)

Accountant Member

Copy of order forwarded to:

- | | |
|--|---------------------------|
| <i>(1) The appellant</i> | <i>(2) The respondent</i> |
| <i>(3) Commissioner</i> | <i>(4) CIT(A)</i> |
| <i>(5) Departmental Representative</i> | <i>(6) Guard File</i> |

By order